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April 22, 2004

Chairman Marc Spitzer
Commissioner William Mundell
Commissioner Mike Gleason
Commissioner Jeff Hatch-Miller
1200 W. Washington Ave.
Phoenix, Arizona 85007

Re: Bensch Ranch Utilities, LLC, Docket No. SW-04026A-01-0499, Decision No. 66650

Dear Colleagues:

On April 14, Mr. Kempley requested the sense of the Commission with regard to reopening the Bensch Ranch Utilities matter.

It appears from Mr. Shapiro's letter, representing the position of BR Utilities, that the company is offering to formally exclude Lester Smith from all company operations and provide other pertinent information with regard to his activities as a real estate investor in the project.

I believe it would be appropriate for the Commission to re-engage the company on this issue, as it does appear at first blush that they are proposing to address our concerns about Mr. Smith's potential involvement with the utility.

I would also note as an aside that this is another problematic example of a utility that has been formed as an LLC. BR Utilities is apparently agreeing voluntarily to a condition in its CC&N that would mandate that the company come to the ACC for approval of any ownership changes. However, as we have discussed before, it is the opinion of our Staff that in general, public service corporations that form as LLC's are not required to get ACC approval for such ownership changes.

Sincerely,

Kris Mayes
Commissioner

Cc: Chris Kempley
Brian McNeil